

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CURTIS MCDANIEL,

Plaintiff,

-against-

THE PEOPLE OF THE STATE OF NEW
YORK, *et al.*,

Defendants.

20-CV-0254 (CM)

ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, who is proceeding *pro se*, brings this action alleging that Defendants violated his rights. Plaintiff, who is currently detained at Rikers Island, did not submit an application to proceed *in forma pauperis* (IFP) and prisoner authorization, nor did he pay the filing fee.

For the reasons set forth in this order, the Court directs Plaintiff to show cause why this action should not be dismissed as duplicative of *McDaniel v. People of the State of New York*, ECF 1:19-CV-3526, 1.¹

DISCUSSION

Plaintiff has filed a 53-page handwritten complaint, raising claims of false arrest, malicious prosecution, and use of excessive force, and names as Defendants: (1) “The People of the City of New York”; (2) Judges A. Drysdale, Ann D. Thompson, and Richard Tsai; (3) Assistant District Attorney (ADA) C. Rivet; (4) Detective J. Quitty; (5) Police Officers Kenneth Faulkner, Daniel Howell, and two John Doe officer-defendants; and (6) Emergency Service Unit

¹ This action also may be duplicative of *McDaniel v. People of the State of New York*, ECF 1:19-CV-8166, 1. In that action, after Plaintiff submitted several letters attempting to amend his amended complaint, the Court granted Plaintiff leave to file a second amended complaint. *McDaniel*, ECF 1:19-CV-8166, 11 (issued on Nov. 22, 2019). As of the date of this order, Plaintiff has not filed a second amended complaint in that action.

Officers (ESUO) Patrick Fanning, Bobby Wilkins, and three John Doe ESUO defendants. He seeks money damages.

In addition to this action, Plaintiff has two other actions in this Court where he names many of the same individuals and raises some of the same allegations. *See McDaniel v. People of the State of New York*, ECF 1:19-CV-8166, 1; *McDaniel*, ECF 1:19-CV-3526, 1. As mentioned above, in the 19-CV-8166 matter, the Court granted Plaintiff leave to file a second amended complaint. ECF 1:19-CV-8166, 11. And in the 19-CV-3526 matter, Magistrate Judge Cott stayed the action pending an investigation by the Civilian Complaint Review Board.² ECF 1:19-CV-3526, 30.

Because the Court believes that this action may be a duplicate submission, and no useful purpose would be served by litigating this action and the 19-CV-3526 action, the Court directs Plaintiff within 30 days of the date of this order to show cause why this action should not be dismissed as duplicative of the 19-CV-3526 action. A declaration form is attached to this order.

Should Plaintiff wish to proceed with this new action, he should also submit the attached IFP application and prisoner authorization. If Plaintiff submits an IFP application, and the Court grants it, he shall be charged the \$350.00 filing fee. *See* 28 U.S.C. § 1915(a)(2), (b). Should the action be dismissed as duplicative, the Clerk of Court shall not charge Plaintiff the \$350.00 filing

² In addition to these two actions, Plaintiff has also filed three other actions. *See McDaniel v. People of the City of New York*, ECF 1:19-CV-11265, 2 (filed Dec. 6, 2019, and brought against police officers, ADAs, and judges); *McDaniel v. John Doe Corr. Officer*, ECF 1:19-CV-8735, 2 (filed Sept. 20, 2019, and brought against correction officers regarding an alleged failure to protect); *McDaniel v. People of the State of New York*, ECF 1:19-CV-7680, 1 (filed on Aug. 14, 2019, and brought against police officers, ADAs, and some of the same judges named here).

fee for this action, and the Warden or Superintendent having custody of Plaintiff shall not deduct or encumber funds from Plaintiff's prison trust account for this lawsuit.

Should Plaintiff fail to respond within 30 days, the Court will dismiss the action without prejudice, and he will not be charged the \$350.00 filing fee.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

The Court directs Plaintiff to show cause why this action should not be dismissed as duplicative of his two pending cases, *McDaniel v. People of the State of New York*, ECF 1:19-CV-8166, 1, and *McDaniel v. People of the State of New York*, ECF 1:19-CV-3526, 1. Attached to this order are: a declaration form, an IFP application, and a prisoner authorization.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: February 3, 2020
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the first and last name of each plaintiff or
petitioner.

Case No. _____ CV _____

-against-

Write the first and last name of each defendant or
respondent.

DECLARATION

Briefly explain above the purpose of the declaration, for example, "in Opposition to Defendant's
Motion for Summary Judgment," or "in Response to Order to Show Cause."

I, _____, declare under penalty of perjury that the
following facts are true and correct:

In the space below, describe any facts that are relevant to the motion or that respond to a court
order. You may also refer to and attach any relevant documents.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Attach additional pages and documents if necessary.

Executed on (date)

Signature

Name

Prison Identification # (if incarcerated)

Address

City

State

Zip Code

Telephone Number (if available)

E-mail Address (if available)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(full name of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

CV () ()

(Provide docket number, if available; if filing this with your complaint, you will not yet have a docket number.)

(full name(s) of the defendant(s)/respondent(s))

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☐ Yes ☐ No (If "No," go to Question 2.)

I am being held at: _____

Do you receive any payment from this institution? ☐ Yes ☐ No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☐ No

If "yes," my employer's name and address are: _____

Gross monthly pay or wages: _____

If "no," what was your last date of employment? _____

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(b) Rent payments, interest, or dividends	<input type="checkbox"/> Yes	<input type="checkbox"/> No

- | | | |
|---|------------------------------|-----------------------------|
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (g) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

<hr/>		<hr/>	
Dated		Signature	
<hr/>		<hr/>	
Name (Last, First, MI)		Prison Identification # (if incarcerated)	
<hr/>		<hr/>	
Address	City	State	Zip Code
<hr/>		<hr/>	
Telephone Number		E-mail Address (if available)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(full name of the plaintiff/petitioner)

-against-

CV () ()

(Provide docket number, if available; if filing this with your complaint, you will not yet have a docket number.)

(full name(s) of the defendant(s)/respondent(s))

PRISONER AUTHORIZATION

By signing below, I acknowledge that:

- (1) because I filed this action as a prisoner,¹ I am required by statute (28 U.S.C. § 1915) to pay the full filing fees for this case, even if I am granted the right to proceed *in forma pauperis* (IFP), that is, without prepayment of fees;
- (2) the full \$350 filing fee will be deducted in installments from my prison account, even if my case is dismissed or I voluntarily withdraw it.

I authorize the agency holding me in custody to:

- (1) send a certified copy of my prison trust fund account statement for the past six months (from my current institution or any institution in which I was incarcerated during the past six months);
- (2) calculate the amounts specified by 28 U.S.C. § 1915(b), deduct those amounts from my prison trust fund, and disburse those amounts to the Court.

This authorization applies to any agency into whose custody I may be transferred and to any other district court to which my case may be transferred.

Date

Signature

Name (Last, First, MI)

Prison Identification #

Address

City

State

Zip Code

¹ A "prisoner" is "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation, pretrial release, or diversionary program." 28 U.S.C. § 1915(h).